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Japan's Quantitative Restrictions on the Importation of Agricultural Products

by James M. Lyons*

I. INTRODUCTION

Japan maintains restrictive import quotas on many products which are produced domestically,¹ although Japan is a net importer of food and relies extensively on foreign sources for certain farm products.² Japanese agriculture, although technologically advanced, is comparatively inefficient to U.S. agriculture in terms of productivity and the costs of cultivation.³

The agricultural sector in Japan contrasts sharply with the industrial sector. Whereas Japanese industries are well recognized for both their efficiency and the quality of their automobile, steel, and consumer electronics exports, Japanese farmers export few products. The tremendous growth in Japanese industrial expansion since World War II has been possible only because Japan has had relatively free access to enormous foreign markets. The Japanese economy has grown on the basis of such exports, and sales abroad have permitted it to amass a merchandise trade surplus which exceeded \$35 billion in 1982.⁴ Japan's trade surplus with the United States alone equaled approximately \$20 billion in 1982.⁵

Japan, for both cultural and trade-policy reasons, remains relatively closed to many of the products of its trading partners, although Japan until recently, has enjoyed almost unimpeded access to foreign markets

* Heron, Burchette, Ruckert & Rothwell; J.D., Georgetown University (1977); B.A., State University of New York (1973).

¹ Quotas, for example, are imposed on the imports of fresh oranges, orange and grapefruit juice, beef, apple juice, canned pineapple, grape juice, fruit puree and pastes and tomato sauce. FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, FOREIGN AGRICULTURE CIRCULAR 22 (Mar. 1983) [hereinafter cited as FOREIGN AGRICULTURE CIRCULAR I].

² Kuroda, *The Present State of Agriculture in Japan*, in U.S.-JAPANESE AGRICULTURAL TRADE RELATIONS 91, 141 (E. Caste & K. Hemmi eds. 1982).

³ F. SANDERSON, JAPAN'S FOOD PROSPECTS AND POLICIES 56 (1978).

⁴ The amount of Japan's merchandise trade surplus is misleading because Japan incurs a substantial deficit in services. Destler, *The Wrong Approach to Japanese Trade*, Washington Post, Mar. 16, 1983, at A23, col. 2. The situation of the United States in recent years has been the reverse—a merchandise trade deficit and a surplus in services trade.

⁵ *Id.* at A23, col. 1.

for its goods.⁶ Japan's protectionist trade policy is particularly pronounced in the area of agricultural trade. In recent years, attention has focused increasingly on Japan's restrictions on agricultural imports. These restrictions have become symbolic of what many U.S. statesmen and businessmen consider to be Japan's unwillingness to abide domestically by the same principles of international trade which have permitted it to prosper.

It is said that Japan plays by two sets of rules. On one hand, Japanese business, assisted by its government,⁷ is perceived as preying upon foreign markets since its access to such markets is protected by international trade rules. Simultaneously, Japan is viewed as an insulated society intent upon limiting the access of foreign traders to domestic markets. These perceptions, simplistic as they may be, are based on existing factors that affect Japan's relations with her trading partners.⁸

This contradiction in trade policy is not unique to Japan, but is reflected in varying degrees in the policies of every major trading nation. Nonetheless, the allegation that the Japanese market has been more closed than others is not without factual basis. Japan's limitations on agricultural trade have created a particularly acute difficulty in U.S.-Japanese economic relations.⁹

II. JAPAN'S RESTRICTIVE AGRICULTURAL TRADE POLICY

Japanese agriculture is composed of small land holdings totaling only fourteen million acres.¹⁰ It is hopelessly inefficient and costly when compared with U.S. agriculture. This factor has resulted in Japan's protectionist agricultural policy.

Japan imposed quotas on over 200 agricultural and non-agricultural items as recently as the mid-1960's.¹¹ The justification for such restrictions was Japan's balance of payments problems. By 1963, however, the

⁶ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, JAPANESE BARRIERS TO U.S. TRADE AND RECENT JAPANESE GOVERNMENT TRADE INITIATIVES 1-2 (Nov. 1982) [hereinafter cited as JAPANESE BARRIERS TO U.S. TRADE].

⁷ The Ministry of Industrial Trade and Investment (MITI) plans and coordinates Japan's industrial and trade policy. See generally *Industrial Policy: An Unfair Trade Practice?*, 41 CONG. QUARTERLY, No. 4, at 211-214 (Jan. 29, 1983).

⁸ See JAPANESE BARRIERS TO U.S. TRADE, *supra* note 6, at 1-3.

⁹ The United States has brought 13 of Japan's quotas on agricultural commodity imports to the attention of the GATT. *President Reagan Visits Japan and Korea*, BUSINESS AMERICA, Oct. 31, 1983, at 2, 6-7.

¹⁰ The average size of a farm in Japan is about one hectare or approximately 1.2 acres. This compares with an average farm size of 188 acres in the United States. F. SANDERSON, *supra* note 3, at 56.

¹¹ FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, TRADE STRATEGY WITH JAPAN 2 (1982) (Undated Briefing Paper on Japan).

International Monetary Fund had determined that the balance of payments difficulties had been corrected.¹² Nonetheless, little action was taken to dismantle the restrictive trade practices until recently. Such actions that have been taken, moreover, have been a product of pressure from the United States and the European Economic Community.

Japan's food policy has been based largely on three factors: (1) national self-sufficiency; (2) low agricultural productivity; and, (3) the protection of farm income. The Japanese populace clings to the notion that it must preserve partial food self-sufficiency. For those Japanese who have experienced the deprivation of food shortages during both World War II and the immediate post-war period, the issue of food security is not totally unwarranted.¹³ Japan however, has seen its self-sufficiency in food products decline from approximately 90 percent in 1960 to 73 percent in 1978.¹⁴ Since 1978, the level of self-sufficiency has diminished even further. The small size of Japanese farms has made it more difficult for the nation to remain self-sufficient in food as the Japanese diet improved and became more diversified.

The national concern with self-sufficiency, coupled with the increasing inability of small land holdings to provide the desired level of production, has caused the Japanese government to protect farm income in order to ensure its continued viability.¹⁵ Japan utilizes price supports and import restrictions in order to protect the agricultural sector.¹⁶ This policy forces Japanese consumers to pay prices for food far in excess of world market prices.¹⁷ Yet, Japanese fears about a secure food supply and the

¹² *Id.*

¹³ The issue of food security was revived as a result of the embargo on soybean exports established by the United States in 1974 under the short supply provisions of the Export Administration Act, Pub. L. No. 91-184, § 7, 83 Stat. 845 (1969)(codified at 50 U.S.C. 2406). The Export Administration Act has since been revised but still contains similar short supply provisions. Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503 (codified at 50 U.S.C. 2406). However, food security cannot explain the quantitative and other restrictions imposed on products like ketchup.

¹⁴ U.S. DEPT OF AGRICULTURE, JAPAN: AGRICULTURAL POLICY (briefing paper derived from data published by Japan's Ministry of Agriculture, Forestry, and Fisheries (MAFF)). In 1975, the National Agricultural Council requested a major effort to halt the decline in food self-sufficiency. The plan was adopted by the cabinet in 1975. F. SANDERSON, *supra* note 3, at 26.

¹⁵ Egaitsu, *Japanese Agricultural Policy*, in U.S.-JAPANESE AGRICULTURAL TRADE RELATIONS 148-180 (E. Caste & K. Hemmi eds. 1982).

¹⁶ *Id.* To protect and support small scale agriculture Japan has introduced price and supply stabilization programs based on the Agricultural Basic Law of 1961 and the Food Control Law of 1942. The Agricultural Basic Law permits controls to be imposed on imports if they threaten domestic farm prices.

¹⁷ See generally F. SANDERSON, *supra* note 3. Thus, the Japanese pay approximately five times more for choice cuts of beef than a U.S. consumer would. *Id.* at 22. The cost of price supports in terms of government expenditures is estimated at \$3.5 billion. *Id.* at 23.

political strength of farm groups make it difficult to alter agricultural policy.

The organization of the farm cooperatives in Japan explains the influence they wield in the Liberal Democratic Party (LDP).¹⁸ Farm groups, although numerically significant, have had their influence further enhanced by the failure to redistrict the country to reflect large population shifts from rural to urban centers.¹⁹ The farm vote also has been important because of its stability. Farmers who have joined in a conservative, political coalition with Japan's large businesses are the most reliable supporters of the LDP. Moreover, as the margin by which the LDP exerts control over the Japanese Diet has declined, the farm vote has taken on increasing importance as a swing vote.²⁰ Consequently, the LDP has made every effort to avoid their alienation.

Another explanation for the importance of the farm group is the lack of grass roots organization in the LDP.²¹ The National Union of Agricultural Cooperatives (NUAC) and the Zenchu²² derive much of their strength from their ability to organize successfully. The LDP depends on this organizational structure for its basic support. Although membership in the farm groups is voluntary, virtually all farm families are affiliated.²³ This structure provides the farmers with almost unparalleled political strength.

Over 80 percent of the LDP Diet members come from rural districts.²⁴ The farm groups, as organized political coalitions, therefore, cannot be ignored. The failure to reapportion districts to more accurately reflect the population shifts has provided farmers with much greater political influence than they otherwise would possess.²⁵ In terms of population, rural districts are frequently over-represented relative to urban districts by a factor of three to one to as much as five to one.²⁶ The LDP would almost certainly lose control of the government if farm groups were

¹⁸ The Liberal Democratic Party or LDP has controlled the Japanese Government for over 25 years. Its dominance has been based on a conservative coalition including business and farm groups. Hemmi, *Agriculture and Politics in Japan*, in U.S.-JAPANESE AGRICULTURAL TRADE RELATIONS 219, 220-221 (E. Caste & K. Hemmi eds. 1982).

¹⁹ Fukui, *The Japanese Farmer and Politics*, in THE JAPANESE ECONOMY IN INTERNATIONAL PERSPECTIVE 156 (I. Frank ed. 1975).

²⁰ *Id.* at 156, 157.

²¹ *Id.* at 156.

²² The Central Union of Agricultural Cooperatives, known in Japan as "Zenchu," is a farm organization that wields significant political power in Japan. See *Washington Post*, Nov. 21, 1982, at A-32, col. 1.

²³ Fukui, *supra* note 19, at 154.

²⁴ *Id.* at 156.

²⁵ Hemmi, *supra* note 18, at 223-229.

²⁶ *Id.* at 225.

to significantly alter their party affiliation.²⁷ Consequently, the party has been unwilling to further alienate farmers. Significant disputes with farmers have already developed as a result of the government rice policy. A pronounced reluctance thus exists to further disrupt the relations between the LDP and farm groups by liberalization of the import policy.

The composition of the farm population, however, is itself changing, threatening potential repercussions for its continued political strength. Between 1960 and 1972, farm population dwindled from 14.5 to 6.9 million.²⁸ Moreover, 85 percent of the 5.2 million families involved in farming in 1971 were only partially engaged in cultivation.²⁹ A significant percentage of the income of farm families is now derived from sources outside of agriculture.³⁰ The age structure of the farm population is changing as well. In 1970, approximately 20 percent of the farm workers were 34 years or younger.³¹ The equivalent figure in industry was 55 percent.³² By 1980, the average age of farmers who derived the majority of their income from agriculture was 51.³³ By 1972, only 2.2 percent of the population of secondary school students were entering farming. In 1960, 27 percent of the working population were farmers.³⁴ This figure had declined to 16 percent by 1970³⁵ and has declined progressively since that period. By 1980, only 13 percent of all farmers derived their income solely from agriculture.³⁶

Some other changes in the composition of the farm group, however, will make trade liberalization more difficult. There has been a pronounced increase in the percentage of farm families involved in the production of fresh vegetables, oranges and livestock.³⁷ In 1980, 90 percent of the vegetable and stock farming in Japan was performed by full-time or nearly full-time male farmers who cultivated 40 percent or more of their land.³⁸ These sectors have been the principal areas of growth for the agricultural community. Moreover, much of the concentration in citrus and

²⁷ *Id.* at 228.

²⁸ Fukui, *supra* note 19, at 136.

²⁹ *Id.* at 137.

³⁰ F. SANDERSON, *supra* note 3, at 11.

³¹ Fukui, *supra* note 19, at 138.

³² *Id.*

³³ JAPAN INSTITUTE OF INTERNATIONAL AFFAIRS, WHITE PAPERS OF JAPAN 131 (1980-81) [hereinafter cited as WHITE PAPERS OF JAPAN].

³⁴ Fukui, *supra* note 19, at 138.

³⁵ *Id.*

³⁶ JAPAN ECONOMIC YEARBOOK, THE ORIENTAL ECONOMIST 47 (1980-81).

³⁷ Fukui, *supra* note 19, at 140; FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, FOREIGN AGRICULTURE CIRCULAR 25 (July 1983) [hereinafter cited as FOREIGN AGRICULTURE CIRCULAR II].

³⁸ WHITE PAPERS OF JAPAN, *supra* note 33, at 131.

livestock production has been promoted by the Japanese government.³⁹ When the cost to the government of the rice production supports became unbearable, the government encouraged the rice producers to diversify their crops.⁴⁰

The Japanese government, however, has found it increasingly difficult to resist pressure from the United States for trade liberalization. The first step toward a partial dismantling of Japanese restrictions and quotas began in the 1960's when the lemon and banana trades were exempted from pre-existing barriers. In 1971, Japan liberalized tariffs on 45 of 73 agricultural products.⁴¹ An additional four products were released from restrictions in 1972.⁴² The remaining products subject to quotas involve principally meats, fruits, and vegetables, which constitute the area of growth for the agricultural sector in Japan.

The three Japanese quota restrictions that perhaps affect U.S. agricultural products most severely are those imposed on citrus, beef, and tobacco. The Japanese restrictions are particularly onerous in that they combine both quantitative limitations and high duties.⁴³

The quota on fresh oranges, set at 15,000 metric tons in 1977, was scheduled to expand to 83,000 metric tons in 1983.⁴⁴ This larger quantity, however, will still constitute a small percentage of total Japanese Mikan⁴⁵ production. During the preceding eight years, this percentage has been as low as 0.2 percent.⁴⁶

Mikan producers have resisted U.S. requests for further liberalization of the citrus trade.⁴⁷ Japanese farmers, who in recent years have expanded domestic production, claim that additional imports would depress prices and make it difficult to justify their production levels. These alle-

³⁹ F. SANDERSON, *supra* note 3, at 21-22; FOREIGN AGRICULTURE CIRCULAR II, *supra* note 37, at 25-26.

⁴⁰ Egaitsu, *supra* note 15, at 175-178.

⁴¹ Fukui, *supra* note 19, at 149.

⁴² *Id.*

⁴³ For example, imported oranges are subject to both a quota and 40 percent duty during the period from December 1 to May 31 each year. FRUIT AND VEGETABLE DIVISION, FOREIGN AGRICULTURAL SERVICE, CITRUS IN JAPAN: AREA PRODUCTION TRADE 19-20 (Mar. 1978) [hereinafter cited as CITRUS IN JAPAN]. Beef is likewise subject to a quota and tariff duties of 25 percent. F. SANDERSON, *supra* note 3, at 22.

⁴⁴ R. SINHA, JAPAN'S OPTIONS FOR THE 1980's, at 105 (1982).

⁴⁵ Eighty-five percent of Japan's orange production consists of Unshu-Mikans which is considered to be more a tangerine than an orange. Twenty-five percent are canned. Half of that total is shipped to the United States. See CITRUS IN JAPAN, *supra* note 43, at 2-5.

⁴⁶ See FOREIGN AGRICULTURE CIRCULAR I, *supra* note 1, at 72. Even if liberalization of trade restrictions permitted orange imports to double, U.S. oranges would still only constitute 5 percent of the supply in Japan.

⁴⁷ Interview with Iwao Yamaguchi, Senior Managing Director of Japan's Central Union of Agricultural Cooperatives-Zenchu in 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 14, at 554 (Jan. 11, 1983); FOREIGN AGRICULTURE CIRCULAR I, *supra* note 1.

gations appear largely groundless. Statistics suggest that imported oranges are not likely to adversely affect Japanese Mikan production.⁴⁸ Retail prices in Tokyo for domestic and imported oranges demonstrate that imported oranges sell at prices two to five times higher than domestic fruit.⁴⁹ Moreover, imports have steadily increased as restrictions have permitted, despite a forty percent tariff during the marketing season for Mikans.⁵⁰

Restrictions and high tariffs on other products, such as grapefruit, are even more difficult to justify. Japan does not produce grapefruit,⁵¹ but nevertheless, imposes a high duty on imported grapefruit: 25 percent ad valorem.⁵² Citrus juices are also subject to restriction. A 30 percent tariff is imposed and imported juices must be blended in mixtures containing at least 40 percent domestic juices.⁵³ Orange juice imports, moreover, have been limited to 600 metric tons and were scheduled to increase to 6,500 metric tons in 1983.⁵⁴ Even that level is low given that Japanese consumer demand for orange juice is in excess of 104,000 metric tons annually.⁵⁵

Similar restrictions exist on the importation of beef. The entire 1978 quota for high quality beef was 16,800 metric tons.⁵⁶ This level was scheduled to increase to 30,800 metric tons in 1983.⁵⁷ Severe import restrictions and a 25 percent duty on imports have sustained Japanese beef prices at levels three to four times higher than equivalent U.S. product prices.⁵⁸ Moreover, the number of beef cattle in Japan has declined as approximately two-thirds of production now comes from dairy herds.⁵⁹ In light of expected growth in meat demand,⁶⁰ the restrictions and duties on beef imports are a significant levy on Japanese consumers while simultane-

⁴⁸ See FOREIGN AGRICULTURE CIRCULAR II, *supra* note 37, at 26, 28.

⁴⁹ CITRUS IN JAPAN, *supra* note 43, at 23.

⁵⁰ *Id.* at 19-21.

⁵¹ S. Res. 462, 97th Cong., 2d Sess., 128 CONG. REC. S11465-466 (daily ed. Sept. 14, 1982).

⁵² FOREIGN AGRICULTURAL SERVICE, U.S. DEP'T OF AGRICULTURE, REPORT ON AGRICULTURAL CONCESSIONS IN THE MULTILATERAL TRADE NEGOTIATIONS 89 (June 1981).

⁵³ JAPANESE BARRIERS TO U.S. TRADE, *supra* note 6, at 11.

⁵⁴ R. SINHA, *supra* note 44, at 105.

⁵⁵ FOREIGN AGRICULTURE CIRCULAR II, *supra* note 37, at 29. The 104,000 metric ton figure was calculated by multiplying the 5 kilogram per capita consumption of orange juice in Japan by the population in Japan (104 million), yielding a figure of 520,000 metric tons. This figure was then divided by an approximate conversion factor of 5 because the Circular's statistics were stated in fresh tons.

⁵⁶ R. SINHA, *supra* note 44, at 105.

⁵⁷ *Id.*

⁵⁸ F. SANDERSON, *supra* note 3, at 22.

⁵⁹ *Id.*

⁶⁰ *Id.* at 56-57.

ously posing a substantial obstacle to improving trade relations with the United States.

The restrictions on tobacco control have been equally encompassing. The Japanese policy incorporating high tariffs and distribution restraints has been a source of friction between the United States and Japan for a number of years.

Japan's policy on tobacco imports was unilaterally modified by Japan in 1980 after two years of consultations with the United States. In November 1980, Japan made several concessions which led to the termination of two actions initiated by U.S. producers⁶¹ under the mechanism of section 301 of the Trade Act of 1974.⁶² As a result of this agreement, Japan has reduced the tariff on cigarettes, cigars and pipe tobacco, and has permitted greater market access for foreign products.⁶³ Measures were taken to reduce the price differential between imported and domestic cigarettes and the number of retailers permitted to sell imported cigarettes was increased. These concessions, together with the grant of permission given to U.S. producers to use Japanese language media for advertising, provided for a substantial lessening of restrictions on imports.⁶⁴ However, significant impediments to Japan's tobacco market remain. Although the duty on imported cigarettes was reduced from 90 percent,⁶⁵ on April 1, 1981, it still remains at a comparatively high level of 35 percent ad valorem.⁶⁶

The resistance of Japanese farmers to the liberalization of trade stems from the large price differential between Japanese and foreign agricultural products.⁶⁷ The price differential reflects the higher cost of production in Japan. For example, it costs three to four times as much to

⁶¹ On March 14, 1979, the Cigar Association of America, Inc. filed its petition (relating to cigars) under the Trade Act of 1974. The Associated Tobacco Manufacturers filed a similar petition (relating to pipe tobacco) on October 22, 1979. See OFFICE OF THE U.S. TRADE REPRESENTATIVE, SECTION 301 TABLE OF CASES 5 [hereinafter cited as SECTION 301 TABLE OF CASES]. These petitions were subsequently accepted by the Office of the U.S. Trade Representative. See 44 Fed. Reg. 19083, 64938 (1979).

⁶² This provision, codified at 19 U.S.C. § 2411-2416 (1976), permits a private party to petition the United States government to initiate an investigation to determine whether alleged trade practices are unreasonable, unjustifiable or discriminatory and a burden on U.S. commerce. If the President determines that the statutory criteria are met, he must initiate action to resolve the dispute or take retaliatory action.

⁶³ SECTION 301 TABLE OF CASES, *supra* note 61, at 5.

⁶⁴ U.S. INT'L TRADE COMMISSION, OPERATIONS OF THE TRADE AGREEMENTS PROGRAM, 32D REPORT, U.S.I.T.C. Pub. No. 1307, at 150 (1982) [hereinafter cited as OPERATIONS OF THE TRADE AGREEMENTS PROGRAM]. See also 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 5, at 159 (Nov. 2, 1982).

⁶⁵ Japan's Tariff Reduction on Items of U.S. Interest, Ministry of Foreign Affairs Press Release 3 (Dec. 25, 1982).

⁶⁶ *Id.*

⁶⁷ See, e.g., *supra* note 17; *supra* note 46 and accompanying text.

raise wheat or beef in Japan as it does in the United States.⁶⁸ Japanese agricultural products are not competitive with U.S. products and, therefore, Japanese farmers favor import restrictions.

III. QUANTITATIVE RESTRICTIONS AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The General Agreement on Tariffs and Trade (GATT) specifically prohibits the establishment of quantitative restrictions by contracting parties.⁶⁹ Blatant quota limitations, such as those that the Japanese have imposed on imports of citrus, beef, and tobacco products, are prohibited.

Article XI of GATT contains a general prohibition on quantitative restrictions.⁷⁰ The limitation placed on the use of quotas by contracting parties was intended to eliminate the most pernicious of trade barriers. Unlike other impediments to trade, including high tariffs which may serve to deter imports or limit demand depending upon the price elasticity of the particular imported product, quotas operate to eliminate entirely the functioning of comparative advantage in the market place. The use of quotas and other quantitative restrictions therefore was limited under GATT.

Article XI also provides three specific exceptions to the general rule against the use of quotas. First, export restrictions are permitted to relieve food shortages.⁷¹ Second, restrictions that are necessary to the application of domestic standards are sanctioned.⁷² Third, import restrictions on agricultural and fishery products are allowable when they are necessary for the enforcement of government measures.⁷³

The first and second exceptions which permit the establishment of quantitative restrictions in the instance of food shortages or as necessary to the implementation of standards, are inapplicable to Japan's quotas on citrus, beef, and tobacco.⁷⁴ The third exception also is irrelevant to Japan's import quotas on specialty products and beef.⁷⁵

⁶⁸ See Fukui, *supra* note 19, at 150.

⁶⁹ General Agreement on Tariffs and Trade [hereinafter cited as GATT], *opened for signature*, Oct. 30 1947, art. XI, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

⁷⁰ *Id.* at art. XI, para. 1.

⁷¹ *Id.* at art. XI, para. 2(a).

⁷² *Id.* at art. XI, para. 2(b).

⁷³ *Id.* at art. XI, para. 2(c).

⁷⁴ Citrus imports from those parts of California affected by the medfly in 1981-1982 were temporarily banned. The duration of the prohibition on imports was considered by many U.S. officials to have been excessive. See FOREIGN AGRICULTURE CIRCULAR I, *supra* note 1, at 20.

⁷⁵ This exception is not relevant because Japan has not imposed restrictions on either beef production or tobacco processing. Although the further expansion of Mikan orange production is discouraged, the import restrictions predated such domestic control measures.

The third exception is only applicable in situations when the government action is intended to restrict the quantity of domestic production or marketing, or reduce a surplus through distribution to domestic consumers at prices below market value.⁷⁶ The Japanese restrictions fulfill neither of these requirements. Japan has not discouraged the domestic production of citrus, beef or tobacco products, and prevailing prices for these commodities exceed international prices. Moreover, if Japan were to impose quantitative restrictions on its domestic production of Mikan oranges,⁷⁷ quotas on imports should be permissible under Article XI only if they were applied without altering the relative balance between domestic production and imports.⁷⁸ The precise market share of imports relative to exports is difficult to establish when quotas have always been a part of the import scheme.

A much broader exception to Article XI's prohibitions on quantitative restrictions is contained in Article XII.⁷⁹ The imposition of quotas and similar devices is permitted by Article XII when required by balance of payments considerations or other external factors affecting a contracting party's monetary reserves.⁸⁰ Article XII specifically sanctions import restrictions when either a serious decline in monetary reserves is threatened or a reasonable increase in reserves is necessary.⁸¹ Article XVIII sets forth an even more expansive balance of payments defense for developing countries.⁸²

The balance of payments basis for quantitative restrictions is inapplicable to Japan since it has accumulated substantial monetary reserves and enjoyed trade surpluses in recent years.⁸³ In fact, the International Monetary Fund determined in 1963 that Japan's use of quota restrictions could no longer be justified on the basis of balance of payments deficits.⁸⁴ This finding was noteworthy because Article XV, paragraph 2, of GATT states that contracting parties should accept the findings of the International Monetary Fund regarding the criteria of Article XII, paragraph 2(a).

See FOREIGN AGRICULTURE CIRCULAR II, *supra* note 37, at 25.

⁷⁶ GATT, *supra* note 69, at art. XI, para. 2(c).

⁷⁷ Citrus production grew rapidly, expanding by a factor of seven from 500,000 in 1955 to 3.4 million tons in 1973. F. SANDERSON, *supra* note 3, at 11.

⁷⁸ GATT, *supra* note 69, at art. XI, para. 2(c).

⁷⁹ *Id.* at art. XII. Article XII permits an exception to Article XI's prohibition of quantitative restrictions in those situations where action is necessary to prevent further erosion of a balance of payments position or a deterioration in monetary reserves.

⁸⁰ *Id.* at art. XII, para. 1.

⁸¹ *Id.* at art. XII, para. 2(a).

⁸² See *Id.* at art. XVIII (particularly sections A, B, and C).

⁸³ See R. SINHA, *supra* note 44, at 108-09.

⁸⁴ See TRADE STRATEGY WITH JAPAN, *supra* note 11, at 2.

The scope of Article XI's prohibition on quantitative restrictions has been defined in several working party papers. A 1950 working party paper⁸⁵ on quantitative restrictions determined that programs similar to Japan's restrictions on certain agricultural imports were inconsistent with GATT.⁸⁶ Such unsanctioned use of quantitative import restrictions are an appropriate basis for recourse to the dispute settlement mechanism of the Agreement.⁸⁷

The working party specifically identified three different practices which it determined to be abuses of the provisions of Articles XI and XII which permit quantitative restrictions in certain narrowly defined situations.⁸⁸ The first type of practice examined by the working party has several similarities with Japan's quota on orange imports. For example, the maintenance of quantitative restraints which provide favored treatment for imported products which are either non-competitive or less competitive with a domestic industry were considered to contravene the Agreement. Japan limits orange imports in exactly this manner by permitting the majority of imports under its quota to be entered only during those months which do not correspond to the Mikan marketing season.

In conclusion, the working party decided that quotas which are not justified by the balance of payments provisions of Article XII or other provisions of the Agreement specifically permitting the imposition of quantitative restrictions were a violation of GATT.

Prior to the U.S. government's action in 1983 to seek GATT consultations on quotas affecting 13 products, Japanese import restrictions had been the subject of only two actions under section 301 of the Trade Act of 1974.⁸⁹ Both of those proceedings involved tobacco products. The first of the actions, for which a petition was received by the United States Trade Representative on March 14, 1979, contained allegations that the Japanese government's tobacco monopoly maintained unreasonable restrictions, established excessively high prices and unfairly limited advertising

⁸⁵ General Agreement on Tariffs and Trade, GATT/CP/4/33/Add. 1 (Apr. 5, 1950).

⁸⁶ See *Id.* at 7.

⁸⁷ *Id.*

⁸⁸ *Id.* These practices are: (1) the maintenance of balance-of-payments restrictions giving priority to imports of products based on the competitiveness or non-competitiveness of such imports with a domestic industry; (2) the imposition of administrative obstacles to the full utilization of balance-of-payments import quotas; and (3) quantitative restrictions imposed as a means of retaliation against a country refusing to conclude a trade agreement with the country concerned.

⁸⁹ See *supra* note 61. Two additional actions were undertaken relating to discriminatory agreements between Japan, Korea, Brazil and the PRC regarding thrown silk imports and Japanese quotas on leather imports. Both issues were resolved during consultations between the two countries and did not proceed to dispute settlement. See SECTION 301 TABLE OF CASES, *supra* note 61, at 3-4.

and distribution of imported cigars.⁹⁰ Consultations were initiated with Japan toward a resolution of these issues in 1979. The second proceeding, pertaining to pipe tobacco, involved allegations identical to those relating to cigars.⁹¹ Initial consultations with Japan on the restrictions imposed on imported pipe tobacco were unsuccessful and actions on the two cases were combined for purposes of dispute settlement under Article XXIII, paragraph 2, of GATT. Both cases were withdrawn in January, 1981 when Japan agreed to ameliorate the market restrictions and to reduce the applicable tariff duties.⁹²

The citrus and beef industries in the United States sought the intervention of the federal government in their efforts to eliminate Japan's remaining agricultural quotas.⁹³ Action by U.S. government is unlikely, however, before the expiration of the 1979 Strauss-Ushiba Agreement.⁹⁴

Japan, of course, is not the only country to use protectionist devices to secure the well-being of its agricultural sector. The United States also imposes limitations on beef imports. The Meat Import Act of 1979⁹⁵ restricts imports of beef to 1.224 billion pounds annually. It is evident, however, that the U.S. quota permits an import volume in excess of the 30,800 tons which will be permitted by Japan in 1983. In fact, the U.S. quota was not filled during the years 1980, 1981 or 1982.

Other U.S. restrictions have impeded the free flow of trade. The United States has quantitative restrictions on several commodities including cotton, sugar, peanuts, certain potatoes and certain fish.⁹⁶ The only GATT action in which a contracting party was authorized to withdraw previously negotiated concessions in retaliation for damage suffered from quantitative restrictions on imports came in an action by the Netherlands against U.S. dairy quotas.⁹⁷

Since 1955, however, U.S. restrictions have been safe from challenge

⁹⁰ SECTION 301 TABLE OF CASES, *supra* note 61, at 5.

⁹¹ *Id.*

⁹² *Id.*

⁹³ See *U.S.-Japanese Economic Relations: Hearings Before the Subcomm. on International Trade, Finance and Security Economics of the Joint Economic Comm.*, 97th Cong., 1st Sess. 172-174 (1981) (testimony of the California-Arizona Citrus League).

⁹⁴ The Strauss-Ushiba agreement provided for a gradual liberalization of Japanese import quotas over a five year period culminating in April, 1984. 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 4, at 157 (May 3, 1983).

⁹⁵ Meat Import Act of 1979, Pub. L. No. 96-177, § 1, 93 Stat. 1291 (codified at 19 U.S.C. § 1202).

⁹⁶ R. SINHA, *supra* note 44, at 70

⁹⁷ GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS 31-32 (1st Supp. 1953) [hereinafter cited as GATT, BISD with corresponding supplement reference]; GATT, BISD 28 (2d Supp. 1954); GATT, BISD 46 (3d Supp. 1955); GATT, BISD 31-32 (4th Supp. 1956); GATT, BISD 28-29 (5th Supp. 1957); GATT, BISD 14 (6th Supp. 1958); GATT, BISD 23-24 (7th Supp. 1959).

as the result of a GATT waiver granted in that year.⁹⁸ The waiver was given in part to avoid a U.S. defection from GATT at a time when the world economy was recovering from World War II. A conflict between GATT Article XI and U.S. legislated quotas under section 22 of the Agricultural Adjustment Act⁹⁹ was thus avoided. This accommodation was not without cost. Although the waiver empowered the United States to protect its agricultural sector and remain relatively free from international challenge, a situation was created in which other contracting parties were unwilling to abide Article XI's restraints as long as the United States was authorized to act freely to protect her own domestic agricultural producers.

The United States, however, has not been the sole recipient of a waiver. Other waivers have benefited Belgium,¹⁰⁰ Luxembourg,¹⁰¹ and the Federal Republic of Germany.¹⁰²

IV. THE UNITED STATES AND JAPAN: AT THE CROSS-ROADS

Despite import quotas on several important agricultural products, Japan is an enormous market for U.S. farm products.¹⁰³ This trade, of course, has been mutually beneficial.

Improvements in the standard of living in post-war Japan stimulated changes in diet and consumption patterns necessitating either the production of a more diversified grocery basket in Japan or an expansion of imports. The laws of comparative advantage dictated that the most cost effective means of filling this consumer demand was through purchases abroad given Japan's limited amount of arable land and its high cultivation costs. U.S. farmers benefited from this expanded trade by marketing harvests which otherwise might have become unmarketable surpluses.

Japan is the world's largest net importer of agricultural goods, purchasing approximately fifteen percent of total U.S. farm exports.¹⁰⁴ In

⁹⁸ GATT, BISD, *supra* note 97, at 32 (3d Supp. 1955).

⁹⁹ 7 U.S.C. § 624 (1982). The issue, however, has not disappeared. The appropriateness of the waivers' continuance is under discussion. See 19 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 23, at 859 (Sept. 13, 1983).

¹⁰⁰ GATT, BISD, *supra* note 97, at 22 (4th Supp. 1956).

¹⁰¹ *Id.* at 27.

¹⁰² GATT, BISD 31 (8th Supp. 1960). The waivers granted to Belgium, Luxembourg and the Federal Republic of Germany were granted with the expectation that the restrictions imposed during the period of balance of payment difficulties would be removed within a comparatively short time period as economic conditions permitted.

¹⁰³ During the first six months of 1983, U.S. agricultural exports to Japan totaled \$2.8 billion. Exports of corn and soybeans accounted for nearly one-half of that total. *President Reagan Visits Japan and Korea*, *supra* note 9, at 5.

¹⁰⁴ *Hearing Before the Subcomm. on Foreign Agriculture of the Senate Comm. on Agriculture, Nutrition and Forestry*, 97th Cong., 2d Sess. 6 (1982) (statement by R.E. Ander-

1976, it was estimated that one out of every twenty acres in the United States produced agricultural products for consumption in Japan. In fact, U.S. exports to Japan are heavily skewed toward non-manufactured goods.¹⁰⁵ Primary products account for 61 percent of U.S. exports to Japan¹⁰⁶ with one-third of total U.S. exports consisting of agricultural goods.¹⁰⁷ The tremendous volume of U.S. farm exports enabled the United States to finance in part the imports of Japanese manufactured products. U.S. farm exports also had a liberalizing influence on U.S. trade policy at a time when many U.S. industries were seeking protection from competition with foreign manufactured products.

However, as U.S. farmers increasingly encountered barriers to agricultural exports, their support for liberalized trade with Japan diminished. The lopsided structure of U.S.-Japanese trade, whereby Japan imported low value primary products from the United States, virtually excluded some commodities and exported high value manufactured products, was quickly seized upon by U.S. farm groups as a means of applying leverage to eliminate Japanese quotas and other import restrictions. The fruit, tobacco, and livestock groups which have traditionally supported unencumbered trade used the relative openness of U.S. markets for Japanese manufactured products in seeking to exert pressure for a reduction of both tariff and non-tariff trade barriers in Japan. The sheer volume of Japan's exports of manufactured goods made this possible. Forty-six percent of Japanese exports consists of machinery and transportation products while an additional 30 percent consists of other manufactured goods.¹⁰⁸ The United States purchases 25.6 percent of these exports.¹⁰⁹ Several Japanese economists have supported U.S. demands for liberalization of Japanese agricultural quotas because of the perceived retaliatory threat to Japanese exports of manufactured products.¹¹⁰

The perceived inequity in Japan's trade policy of promoting exports while limiting or sometimes prohibiting imports has become highly visible in the agricultural sector.¹¹¹ Cautious steps have been taken by Japan to

son, Assistant Administrator, International Trade Policy, U.S. Department of Agriculture); see also F. SANDERSON, *supra* note 3, at 1.

¹⁰⁵ See Houck, *Agreements and Policy in U.S.-Japanese Agricultural Trade* in U.S.-JAPANESE AGRICULTURAL TRADE RELATIONS 59 (E. Caste & K. Hemmi ed. 1982).

¹⁰⁶ R. SINHA, *supra* note 44, at 54. Primary products include foodstuffs, raw materials and fuels. *Id.*

¹⁰⁷ Houck, *supra* note 105, at 59.

¹⁰⁸ R. SINHA, *supra* note 44, at 46.

¹⁰⁹ *Id.*

¹¹⁰ See 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 15, at 594 (Jan. 18, 1983).

¹¹¹ See SUBCOMMITTEE ON TRADE OF THE HOUSE COMMITTEE ON WAYS AND MEANS, 97TH CONG., 1ST SESS., REPORT ON TRADE MISSION TO FAR EAST 8 (Comm. Print 1981) wherein it was stated: "A major, gradual restructuring of Japan's agricultural system is the single most

eliminate its barriers to agricultural trade. However, the slowness with which Japan has acted and the irrelevancy of some of its concessions has caused further controversy.¹¹²

Japan's first significant step toward a reduction in trade barriers was made during the Strauss-Ushiba talks¹¹³ and the Tokyo Round of the Multilateral Trade Negotiations (MTN).¹¹⁴ During the MTN, Japan promised to increase quota levels for high quality beef to 30,800 metric tons and for citrus products to 83,000 metric tons by 1983.¹¹⁵ Further negotiations were scheduled for early 1983.

Additional concessions were made in late 1981. On December 16, 1981, Japan indicated that it would review its remaining 27 import quotas and accelerate duty reductions agreed to during the MTN.¹¹⁶ Less than one week later, on December 21, Japan announced that the duty reductions scheduled to take effect during 1983 and 1984 would be expedited to April, 1982.¹¹⁷

Such concessions, though unilateral, were perceived to be inadequate by the United States. The growing trade imbalance with Japan coupled with the recent large harvests in the United States culminated in increased pressure for removal of all trade barriers restricting imports into Japan. In 1982, the United States advised Japan that action must be taken to eliminate the restrictions on imports or else reciprocal restric-

important step Japan can take to remove its worldwide reputation as an unfair, one-way trading partner."

¹¹² In December 1982, reductions of tariffs on 228 items were announced including reductions on 35 agricultural items of interest to the United States. If approved by the Japanese Diet those reductions will take place April 1, 1983. With the exception of a major reduction in the duty on tobacco, all other changes were minor in effect. See *JAPANESE BARRIERS TO U.S. TRADE*, *supra* note 6. The Japan - United States Economic Relations Group or "Wisemen's Group" established by former President Carter and the late Prime Minister Ohira, issued a report on January 7, 1981, recommending that Japan eliminate restrictions on agricultural imports, reduce price supports to levels consistent with world prices and restructure its agriculture to be more competitive. *OPERATIONS OF THE TRADE AGREEMENTS PROGRAM*, *supra* note 64, at 154.

¹¹³ Japan announced in the Strauss-Ushiba communication the elimination of import quotas on 11 agricultural and fishery products and an expansion of the import quotas on beef, oranges, and orange and grapefruit juice. See R. SINHA, *supra* note 44, at 104-105.

¹¹⁴ The concessions made by Japan included a reduction of duties on meat, poultry, vegetable oil and fruit products. The most important of the actions involved the establishment of a zero duty rate on soybean imports. See Sanderson, *Managing Our Agricultural Interdependence in U.S.-JAPANESE AGRICULTURAL TRADE RELATIONS* 393, 422 (E. Caste & K. Hemmi eds. 1982).

¹¹⁵ R. SINHA, *supra* note 44, at 105.

¹¹⁶ U.S. INT'L TRADE COMMISSION, *OPERATION OF THE TRADE AGREEMENTS PROGRAM*, U.S.I.T.C. Pub. No. 1308, at 148 (1981).

¹¹⁷ *Id.*

tions would be adopted by the United States.¹¹⁸ A fourteen point list which included requests for liberalization of trade in oranges, citrus juices, beef, and tobacco products was presented. U.S. requests for further liberalization of import quotas have met with only limited success. Talks during October, 1982 in Hawaii ended abruptly when U.S. negotiators walked out over continued Japanese intransigence.¹¹⁹ Despite further discussions during Prime Minister Nakasone's visit to Washington in January, 1983 and U.S. Trade Ambassador William Brock's trip to Japan in February, 1983, no progress has yet been made toward an elimination of the existing trade barriers.¹²⁰

Japan's restrictions on imports of citrus products, beef, and tobacco products will continue to have a deleterious effect on trade relations between the two countries. The restrictions are important for two reasons. First, the quotas preclude an expansion of trade between the countries which would significantly benefit both U.S. agricultural producers and Japanese consumers. Second, the restrictions have become symbolic of what many Americans perceive as Japan's exploitation of other country's markets while its own borders remain closed. The reciprocity and domestic content legislation introduced in the last two sessions of Congress was intended to compel Japan to open its markets to U.S. products.¹²¹

Ambassador Brock's testimony before the Senate Finance Subcommittee on International Trade,¹²² reflected the growing American impatience with foreign trade restrictions. The spate of reciprocity bills introduced during the 97th Congress confirms this frustration.¹²³ Several of the bills were directed to Japan specifically.¹²⁴ House of Representatives Bill 5614 was intended to provide for fair trade between the United States and Japan, and the bill would require the President to limit Japanese exports to the United States when U.S. traders encountered a Japanese trade barrier, or when Japanese exporters competed with the benefit

¹¹⁸ *Id.* at 151; *See also U.S. Will Take Farm Import Quota Issue to GATT*, Asahi Evening News, Apr. 14, 1982, at 1, col. 1.

¹¹⁹ 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 4, at 119-120 (Oct. 26, 1982).

¹²⁰ *See* 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 15, at 593-594 (Jan. 18, 1983); Japanese Government's January 13, 1983, Statement on Open Market Initiatives and Related Materials, *Id.* at 615, 617.

¹²¹ *Trade, Defense Issues Fray U.S.-Japan Ties*, 40 CONG. QUARTERLY, No. 48, at 2903, 2905 (Nov. 27, 1982).

¹²² INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 401, at 757-58 (Mar. 30, 1982).

¹²³ *See* Reifman, *Reciprocity in Foreign Trade*, Issue Brief No. IB82043 (Oct. 13, 1982) (published by Congressional Research Service, The Library of Congress); *Flirting with Reciprocity—New U.S. Trade Policy Makes Some People Nervous*, NATIONAL JOURNAL 320-324 (Feb. 20, 1982); S. Res. 462, 97th Cong., 2d Sess., 128 CONG. REC. S11465 (daily ed. Sept. 14, 1982).

¹²⁴ H.R. 5614, 97th Cong., 2nd Sess. (1982); H.R. 5616, 97th Cong., 1st Sess. (1982).

of unfair advantages bestowed by their government.¹²⁵ Alternate proposals would provide for a two year duty increase for certain Japanese products.¹²⁶ Some draft legislation introduced during the 97th Congress was directed broadly at foreign restrictions on agricultural imports. Thus, House Bill 5860 and House Bill 6072 would have required the President to take action against countries which did not permit open access for U.S. agricultural products.¹²⁷

The dispute with Japan arises at a time when U.S. agriculture confronts a difficult financial environment. U.S. farm exports are encountering barriers to many previously open markets and are confronted by competitors who are often heavily subsidized. These developments cannot help but have an impact on the U.S. farm community's support for open markets. Any defection of the farm community from the defense of liberalized trade is likely to have severe repercussions for U.S. trade policy and will add one additional issue to other disagreements already affecting trade relations between Japan and the United States.

The dispute with Japan accentuates a perception in the United States that international rules of trade formulated under GATT only benefit other countries and have not worked to provide the United States with access to foreign markets.¹²⁸ This view is reinforced by the failure of GATT to encompass foreign investment and services trade which are more important than merchandise trade for many non-agricultural sectors of the U.S. economy, and, in addition, the unwillingness of U.S. trading partners to expand GATT to cover such trade. The focus on Japanese restrictions also comes at a time when the GATT dispute settlement procedures appear to be of diminishing value.¹²⁹ The 1983 panel report in the wheat flour case¹³⁰ confirmed this view. There is thus reason to believe that a failure by the Japanese to open their markets to U.S. agricultural products will result in a further deterioration in trade relations, and a concomitant reinforcement of protectionist force in the United States.

¹²⁵ The bill was referred to the Committee on Ways and Means on February 24, 1982, but was not enacted during the Congressional session.

¹²⁶ H.R. 5616, *supra* note 124.

¹²⁷ H.R. 5860, 97th Cong., 2d Sess., 128 CONG. REC. H950 (daily ed. Mar. 17, 1982) (introduced by Rep. Bereuter); H.R. 6072, 97th Cong., 2d Sess., 128 CONG. REC. H1427 (daily ed. Apr. 5, 1982) (introduced by Rep. Coelho).

¹²⁸ See 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 24, at 972-74 (Mar. 22, 1983).

¹²⁹ *Id.*

¹³⁰ Final Draft of GATT Dispute Panel Findings on U.S. Complaint Concerning EC Subsidies of Wheat Exports, Mar. 3, 1983, reprinted in 18 INT'L TRADE REP. U.S. EXPORT WEEKLY (BNA), No. 25, at 1047-1055 (Mar. 29, 1983).

V. CONCLUSION

Seemingly irresistible political and economic forces are propelling the two countries on a collision course. The Liberal Democratic Party, dependent upon the farm vote, has been reluctant to make sacrifices which would seriously affect the Japanese agricultural community. The United States, which has an enormous merchandise trade deficit with Japan, partly because of the comparative openness of U.S. markets, is indignant over Japanese unwillingness to open its own borders to American agricultural goods which have a demonstrated comparative advantage. These forces have provided and will continue to provide increased momentum for the impetus behind the demand for trade reciprocity and a dismantling of Japan's trade barriers on agricultural products.